BEST AVAILABLE COPY

No. 92-839

Supreme Court, U.S.
FILED
DEC 10 1992
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1992

FREIGHTCOR SERVICES, INC.,

Petitioner,

vs.

VITRO PACKAGING, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

J. DAVID FORSYTH
SESSIONS & FISHMAN
3600 Place St. Charles
201 St. Charles Avenue
New Orleans, Louisiana 70170
(504) 582-1500

WILLIAM J. AUGELLO
Counsel of Record
AUGELLO, PEZOLD & HIRSCHMANN, P.C.
24 Woodbine Avenue - Suite 8
Northport, New York 11768
(516) 261-0100

LAWRENCE A. WINKLE
WINKLE & WELLS
Two Lincoln Center
5420 LBJ Freeway
Dallas, Texas 75240
(214) 386-6040

Attorneys for Respondent

3035
Lutz Appellate Services, Inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

QUESTION PRESENTED

Whether there is a rational basis for the I.C.C.'s interpretation of its regulation voiding a carrier's tariff for failure to execute an effective power of attorney authorizing participation in an agent's tariff.

TABLE OF CONTENTS

Page

Question Presented i

Table of Contents ii

Table of Citations iii

Statement of the Case 1

Summary of Argument 3

Reasons for Denying the Writ 4

I. The Commission's regulations at issue are in furtherance of the filed rate doctrine. 4

II. The Commission's regulations do not result in the retroactive rejection of tariffs. 5

III. The Commission's tariff regulations prevent discrimination and are entitled to judicial deference. 9

IV. Alternatively, if Petitioner's tariff is held to be retroactively voided, the Circuit Court below properly held that the Commission acted pursuant to a specific statutory mandate. 11

V. The courts of appeal are not in conflict on the issue at hand. 12

Conclusion 14

Contents

Page

TABLE OF CITATIONS

Cases Cited:

Arizona Grocery Co. v. Atchison Topeka & Santa Fe Railroad, 284 U.S. 370 (1932) 6

Berwind-White Coal Mining Co. v. Chicago & E.R.R.R., 235 U.S. 371 (1914) 8

Davis v. Portland Seed Co., 264 U.S. 403 (1924) 8

Genstar Chemical Ltd. v. Interstate Commerce Commission, 665 F.2d 1304 (D.C. Cir. 1981), cert. denied, 456 U.S. 905 (1983) 8

Interstate Commerce Commission v. American Trucking Associations, 467 U.S. 354 (1984) 5, 6, 7, 11, 12

Interstate Commerce Commission v. Transcon Lines, 968 F.2d 798 (1992) 12, 13

Jasper Wyman & Son, 8 I.C.C. 2d 246 ..... 7, 8

Louisville & Nashville R.R. Co. v. Maxwell, 237 U.S. 94 (1915) 7

Maislin Industries, U.S., Inc. v. Primary Steel, Inc., 497 U.S. 116 (1990) 3, 8

Contents

Page

Nat'l Motor Freight Traffic Assoc.—Petition for Cancellation of Tariffs That Refer to the Nat'l Motor Freight Classification, But Are Filed By or on Behalf of Non-Participating Carriers, No. 40674, 9 I.C.C. 2d 186 (1992) 6

Udall v. Tallman, 380 U.S. 1 (1965) 10

United States of America v. L. Robert Tannenbaum and Arnold Montague, Criminal No. 92-652, E.D. Pa., Nov. 17, 1992 6

Statutes Cited:

49 U.S.C. § 10743(b)(1) 10, 11

49 U.S.C. §10761(a) 4

49 U.S.C. § 10762(a)(1) 3, 4

49 U.S.C. § 10762(e) 5

Other Authorities Cited:

49 C.F.R. § 1312.4(d) 2, 3, 4, 11

49 C.F.R. § 1312.10(b) 2

49 C.F.R. § 1312.27(e) 2, 4

49 C.F.R. § 1312.30 2

Contents

	Page
49 C.F.R. § 1312.30(c)	2
49 C.F.R. § 1312.30(c)(4)	2, 3, 9
49 C.F.R. § 1320	12

APPENDIX

Appendix A – List of Court Decisions and ICC Decisions Granting Judgment to Defendants on the Issue of the Carrier's Failure to Participate in the Household Goods Carrier's Bureau Mileage Tariff or the National Motor Freight Classification (As Of 12/4/92) 1a

No. 92-839

In the

Supreme Court of the United States

October Term, 1992

FREIGHTCOR SERVICES, INC.

Petitioner,

vs.

VITRO PACKAGING, INC.

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

The Petitioner's writ of certiorari stems from the Fifth Circuit's decision reported at 969 F.2d 1563 (1992) which upheld the I.C.C.'s interpretation of its tariff regulations on the effect of a carrier's "reference" to another carrier's or agent's tariff without participating in that tariff.

Although the government has not participated in the proceedings below, the Court may deem it desirable to invite the

Solicitor General to submit the government's position on this case of first impression.

Respondent adopts Petitioner's statement of the case to the extent stated at pages 3 and 4 of its Petition herein, but offers the following pertinent tariff regulations omitted from Petitioner's Petition:

1. Section 1312.30 of Title 49 C.F.R. provides that when a carrier chooses to publish mileage rates rather than rates stated in cents per 100 lbs., it has three choices for publishing distances to be applied to mileage rates. Subsection 1312.30(c) requires carriers to either (i) publish the distances between all points for which mileage rates are published; (ii) attach a map to the tariff or; (iii) refer to a filed distance guide such as the Household Goods Carrier's Bureau Mileage Guide. The regulation requires the mileage tariff to be filed with the I.C.C., and allows a carrier to refer to another agent's mileage tariff. 49 C.F.R. § 1312.30(c)(4).

2. Section 1312.27(e) requires carriers that opt to incorporate a third party's tariff to also *participate* in that tariff.

3. Section 1312.10(b) requires such carriers to execute a power of attorney to the publisher of the incorporated tariff in order to accomplish the desired participation.

4. Section 1312.4(d) states that "tariffs are void as a matter of law" absent effective powers of attorney.

The I.C.C.'s tariff regulations thus further the filed rate doctrine with respect to the publication of mileage rates which depend upon two elements: 1) the rate per mile and 2) the distances between the origins and destinations to be multiplied by the appropriate rate per mile to determine the applicable freight charges. The regulations require both elements to be published in

filed tariffs and require the carrier to be listed as a participant in both tariffs. Tariffs which refer to another tariff for incorporation of their provisions are void absent an effective power of attorney.

SUMMARY OF ARGUMENT

In *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116 (1990), this Court reaffirmed the filed rate doctrine embodied in the Interstate Commerce Act (I.C.A.) which requires motor common carriers to publish and charge only the rates in tariffs filed with the Interstate Commerce Commission (I.C.C.) 49 U.S.C. § 10762(a)(1). Petitioner violated this central provision of the Act by failing to participate in the mileage tariff which it attempted to incorporate by reference for the computation of distances required to determine charges based on its mileage rates.

The I.C.C.'s tariff regulations provide that carriers opting to incorporate a mileage tariff into their rate tariffs must participate in the referred-to mileage tariff through the execution of powers of attorney. 49 C.F.R. §§ 1312.4(d) and 1312.30(c)(4). Petitioner failed to abide by this regulation and therefore was not listed as a participant in the mileage tariff to which it "referred."

Section 1312.4(d) of Title 49 C.F.R. provides that "tariffs are void as a matter of law" absent an effective power of attorney. Petitioner thus has no effective tariffs upon which to base its undercharge claims, and the Circuit Court below properly remanded the case to the District Court to dismiss the action.

REASONS FOR DENYING THE WRIT

I.

THE COMMISSION'S REGULATIONS AT ISSUE ARE IN FURTHERANCE OF THE FILED RATE DOCTRINE.

The I.C.C.'s tariff regulations whose lawfulness was upheld by the Fifth Circuit Court of Appeals below were promulgated to give effect to the congressionally-mandated filed rate doctrine as expressed in 49 U.S.C. §§ 10761(a) and 10762(a)(1). The regulation at the root of the instant case (49 C.F.R. § 1312.4(d)) voids a carrier's tariff which "refers" to an agent's tariff as a governing publication unless the carrier participates in the referred-to tariff through the execution of a power of attorney as required by 49 C.F.R. § 1312.27(e). In the absence of a power of attorney, agents are prohibited from listing carriers as participating carriers in their tariffs. 49 C.F.R. § 1312.4(d). Therefore, when a carrier fails to participate in the referred-to mileage tariff, the absence of that carrier's name in that tariff is notice to the public that it has no filed tariff from which to compute distances, and therefore, no lawful mileage rates. This result was codified in the third sentence of § 1312.4(d):

> Absent effective concurrences or powers of attorney, tariffs are void as a matter of law.

Section 1312.4(d) is of such fundamental importance to the enforcement of the filed rate doctrine that the provision for voiding a tariff "as a matter of law" is found only in this section of the Commission's tariff regulations. Petitioner admits that it failed to comply with this requirement (Petition for Writ of Certiorari, Page 3). The court and Commission decisions supporting this result are legion. *See Appendix A* hereto. The decision below is in accord

with the filed rate doctrine and therefore certiorari should be denied.

II.

THE COMMISSION'S REGULATIONS DO NOT RESULT IN THE RETROACTIVE REJECTION OF TARIFFS.

Tariffs which are filed in violation of the Commission's tariff regulations requiring powers of attorney as a prerequisite to participation in third parties' tariffs are void *ab initio*, not "retroactively void" as contended by Petitioner. There is no "retroactive rejection" of a tariff if it never became effective, even though filed with the Commission.

Petitioner's attempt to invoke this Court's decision in *Interstate Commerce Commission v. American Trucking Associations* (hereinafter *American*), 467 U.S. 354 (1984), therefore, misses the mark. The statutory basis for Petitioner's position (49 U.S.C. § 10762(e)) is that the Commission *must* reject a tariff which violates its regulations. In fact, however, the statute is permissive.[1] After 1979, when the I.C.C. discontinued its tariff scrutiny activities due to severe reductions in manpower mandated by Congress,[2] many tariffs found their way into the I.C.C.'s tariff file containing unlawful rates and other provisions. The I.C.C. discontinued checking carriers' tariffs to determine if carriers were participating in referred-to tariffs. Therefore, many tariffs were improperly filed naming rates on "exempt" traffic, intrastate

---

1. 49 U.S.C. § 10762(e) provides that "The Commission *may* reject a tariff submitted to it by a common carrier under this section if that tariff violates this section or regulation of the Commission carrying out this section." (emphasis added).

2. *See American*, 467 U.S. at 360 n.4 (1984).

traffic, and referring to classifications[3] and mileage guides[4] not filed with the I.C.C., etc. Even fraudulently altered tariffs have been discovered in the I.C.C.'s Official Tariff Room.[5] Such "filings," however, do not constitute *lawful* tariffs or rates. *Cf. Arizona Grocery Co. v. Atchison Topeka & Santa Fe Railroad*, 284 U.S. 370, 384 (1932).

American does not prohibit the I.C.C.'s finding void a tariff which is *incomplete* on its face. Stated differently, the Commission's inadvertent acceptance of an incomplete tariff cannot fill the void created by the absence of a power of attorney to the publisher of the mileage guide or *the absence of the carrier's name in the "participating carriers" list published by the Household Goods Carrier's Mileage Guide*. When tariff users check Petitioner's tariffs, as required by the filed rate doctrine, and fail to find Petitioner's name as a participant in the mileage tariff, they are placed on notice of the fact that Petitioner has no uniform scale of distances to apply to its mileage rates, and therefore, it has no effective tariff on file at the I.C.C.

---

3. *See* No. 40674, *Nat'l Motor Freight Traffic Assoc. — Petition for Cancellation of Tariffs That Refer to the Nat 'l Motor Freight Classification, But Are Filed By or on Behalf of Non-Participating Carriers*, 9 I.C.C. 2d 186 (1992).

4. *See also*, No. 40787, petition on behalf of the Household Goods Carrier's Bureau seeking a show cause order by the I.C.C. directing non-participating carriers to show cause why their tariffs referring to the mileage tariff should not be stricken (pending).

5. The U.S. Grand Jury in Philadelphia recently indicted the owner of a motor common carrier for allegedly substituting tariff pages in the I.C.C.'s Official Tariff Room. The defendant is alleged to have had a stamp manufactured to duplicate the I.C.C.'s official acknowledgment stamp to authenticate the altered tariff. Criminal No. 92-652, *United States of America v. L. Robert Tannenbaum and Arnold Montague*, E.D. Pa., Nov. 17, 1992.

Under the Interstate Commerce Act, the carrier's *duly* filed rate is the only lawful charge. *Louisville & Nashville R.R. Co. v. Maxwell*, 237 U.S. 94 (1915). Petitioner's tariffs were not "duly filed" due to its failure to execute a power of attorney to incorporate the HGB's mileage tariff into its rate tariff. *American*, on the other hand, involved a duly filed tariff which was effective. The defect in *American* was a substantive violation, *i.e.*, a lack of compliance with the rules governing rate bureau actions. *See Jasper Wyman & Son*, 8 I.C.C. 2d 246 at 259, n. 27. The Commission observed in *Jasper Wyman* that unlike the issue addressed in that case (which is identical to the issue involved in the instant case), the Court in *American* did not have to decide whether the tariff at issue had been *effectively* on file. *Id.* at 259.

In *Jasper Wyman*, as in the instant case, the carrier filed *no* mileage tariff with the Commission, nor did it provide any other uniform method of computing distances in its rate tariff. It "referred" to a mileage tariff, but its failure to "participate" in that tariff by being listed as a participating carrier created an incomplete rate tariff which never attained the status of a "filed" tariff. *Jasper Wyman*, 8 I.C.C. 2d at 259. Petitioner conveniently ignores this portion of the Commission's findings in *Jasper Wyman* at pages 10-11 of its Petition for obvious reasons; *i.e.*, it filed only one-half of the equation, namely the rate, but not the uniform scale of distances between all points served. This is not a mere "technically deficient" tariff, but rather, an incomplete tariff which is void *ab initio*. *Id.* at 259.

Petitioner, in desperation, attempts to characterize its failure to participate in the referred-to mileage tariff as a "secret rate agreement." (Petition For Writ of Certiorari, page 14). This argument is too preposterous to warrant rebuttal except to observe that the alleged intentional voiding of a carrier's tariff would void that tariff for *all* of its shippers, not just the mythical shipper intended to be given a preference.

Nor can Petitioner find comfort in this Court's decisions in *Davis v. Portland Seed Co.*, 264 U.S. 403 (1924) or *Berwind-White Coal Mining Co. v. Chicago & E.R. R. R.*, 235 U.S. 371 (1914). The Court's decisions in these cases are distinguishable in that they involve tariffs which were duly filed with the Commission and contained only technical defects. Petitioner herein never had a distance tariff on file to apply in conjunction with its mileage rates, and therefore it had *no* effective tariff on file. *Cf. Jasper Wyman*, at 260.

Similarly, Petitioner improperly relies on *Genstar Chemical Ltd. v. ICC*, 665 F.2d 1304 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 905 (1983). In *Genstar*, there was an insufficient period of notice prior to the effective date. None of these cases were based on a statutory or regulatory provision stating that the "tariffs are void as a matter of law." Without a *complete* tariff, Petitioner has no basis for its undercharge claim and the case must be dismissed. If Petitioner attempts to seek the collection of other charges based on a higher class rate tariff, as suggested in its Petition, page 17, n. 4, shippers will have recourse to other defenses, such as the reasonableness of the tariff rates sought to be collected. *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 110 S. Ct. 2759, 2767 n. 10 (1990). However, no such claim was raised below and it may not be considered at this stage of the proceedings.

Petitioner cannot claim that it was not warned that it must participate in the mileage guide if it intended to refer to it. The HGB Mileage Guide 100-B, at 2, states the following:

PARTICIPATING CARRIERS

> For list of participating carriers refer to "Participating Carrier and Scope Tariff No. 101B, ICC HGB 101-B, Household Goods Carrier's Bureau, Agent, Supplements Thereto or Reissues Thereof." NOTE: This mileage guide may not be employed by a carrier as a

> governing publication for the purpose of determining interstate transportation rates based on mileage or distance, unless carrier is shown as a participant in the above named tariff.
>
> If a carrier is not listed as a participant, it may not use the Mileage Guide, even if the carrier had given its agent a power of attorney to effect that participation.

In effect, Petitioner is attempting to have the filed rate doctrine apply to its former customers but not to itself. It cannot have it both ways. The filed rate doctrine may have harsh results when strictly applied, but "what's sauce for the goose is sauce for the gander." Petitioner's claims based on the filed rate doctrine were properly dismissed by the court below for failure to have a lawful tariff on file.

III.

THE COMMISSION'S TARIFF REGULATIONS PREVENT DISCRIMINATION AND ARE ENTITLED TO JUDICIAL DEFERENCE.

The I.C.C.'s regulations as affirmed by the Circuit Court below comport with the congressional intent to prevent discrimination among shippers. Without a filed tariff publishing the distances between the points to which the carrier's mileage rates apply, the carrier has only one-half of the necessary equation for a mileage rate, *i.e.*, the rate per mile. The I.C.C.'s regulations give carriers three options for publishing a uniform system for determining the other half of the equation; *i.e.*, the distances between the points served.

49 C.F.R. § 1312.30(c)(4) provides that when a carrier desires

to publish mileage rates, the carrier may either 1) attach a road map to the tariff; 2) publish the mileages with each rate; or 3) refer to a mileage tariff on file with the I.C.C. Petitioner chose the latter method by "referring" to the Household Goods Carrier's Mileage Guide I.C.C. HGB 100, the standard mileage tariff in the industry. However, Petitioner failed to become a *participant* in that mileage tariff by executing the required power of attorney and paying the required participation fee each year. Therefore, Petitioner was never listed as a participating carrier in that tariff. The filed rate doctrine thus precludes Petitioner's reliance on its rate tariff as a lawful basis for the claims at issue herein. The Fifth Circuit properly reversed the lower court's finding to the contrary.[6]

The Fifth Circuit's findings comport with the statutory prohibition against unjust discrimination. Without a filed, uniform mileage tariff, a carrier could charge lower mileage rates to preferred shippers by using shorter distance routes for the computation of mileage rates regardless of the actual routes travelled. Petitioner's mileage rates were not based on actual distances — they attempted, unsuccessfully, to incorporate the uniform mileage scale published and filed by the HGCB. That tariff, however, *is notice to the public that Petitioner was not and never had been a participant.*

Without a uniform mileage tariff, Petitioner's rate tariff is in violation of 49 U.S.C. § 10743(b)(1). The Commission's decision to this effect was given due deference by the court below in accordance with the holding of this Court in *Stewart L. Udall v. James K. Tallman,* 380 U.S. 1 (1965) at 16 (deference to administrative interpretation is even more clearly in order when construction of an adminstrative regulation rather than a statute is

---

6. The District Court below clearly erred by finding that the only requirement was for the mileage guide to be a filed tariff and therefore, Petitioner's mere reference to it without participation therein was sufficient (Appendix p. 3).

in issue. The ultimate criterion is the administrative interpretation, which becomes of controlling weight unless it is plainly erroneous or inconsistent with the regulation).

IV.

ALTERNATIVELY, IF PETITIONER'S TARIFF IS HELD TO BE RETROACTIVELY VOIDED, THE CIRCUIT COURT BELOW PROPERLY HELD THAT THE COMMISSION ACTED PURSUANT TO A SPECIFIC STATUTORY MANDATE.

The Circuit Court below held that Petitioner's tariffs are void as a matter of law and that in any event, the I.C.C. had the power to retroactively void an effective tariff if 1) to do so "furthers a specific statutory mandate of the Commission"; and 2) "the exercise of power is directly and closely tied to that mandate." *American*, 467 U.S. at 367. In justifying its decision, the Circuit Court acknowledged that the Commission has no power to "act affirmatively to void a tariff" under 49 C.F.R. § 1312.4(d). That regulation merely defines when a tariff *becomes effective* or *becomes void* through the action or inaction of a carrier (Appendix p. 20).

The court below then found that the statutory mandate is the Commission's power to regulate carriers' tariffs in furtherance of the National Transportation Policy. Specifically, the Court upheld the Commission's duty under § 10762(a)(1) to "require the disclosure of the identity of the carriers participating in every tariff" (such as the Household Goods Carrier's Mileage Guide and the National Motor Freight Classification) (Appendix p. 24). It then held that this power was "tied to the statute as a necessary means of enforcing the Interstate Commerce Act." (Appendix p. 25).

Thus, the Commission designated *participation* via powers of attorney as the critical act when a filed tariff attempts to incorporate another publication (Appendix, p. 25). The mere *filing* of a document with the I.C.C. does not create a lawful tariff.

The harsh remedy of voiding tariffs under these circumstances was specifically approved by this Court in *American.* The Commission's regulations and the Fifth Circuit's approval thereof are in accord with the statute and the law.

V.

THE COURTS OF APPEAL ARE NOT IN CONFLICT ON THE ISSUE AT HAND.

Petitioner has strained the Ninth Circuit Court of Appeal's decision in *I.C.C. v. Transcon Lines,* 968 F.2d 798 (1992), *rehearing denied,* (9th Cir. Nov. 24, 1992) in an attempt to create a conflict with the decision below when in fact there is no conflict. The Fifth Circuit's decision below upholds a Commission tariff regulation which is in furtherance of the filed rate doctrine. It does not "void a filed tariff" as alleged.

Transcon, on the other hand, involves a regulation[7] promulgated by the I.C.C. pursuant to its statutory mandate[8] to regulate the manner in which carriers extend credit to shippers. *Transcon is* not in conflict with the instant case since they involve substantially different regulatory concepts, namely, 1) the requirement for execution of powers of attorney when a carrier delegates to others its duty to publish and file tariffs *(Vitro);* and 2) the Commission's statutory duty to regulate the extension of credit *(Transcon).* In this case the tariff filing is invalid due to the

---

7. 49 C.F.R. § 1320.

8. 49 U.S.C. § 10743(b)(1).

carrier's violation of the Commission's tariff regulations. In *Transcon,* the tariff was in effect but the carrier violated the Commission's regulations regarding its non-discriminatory extension of credit. Regardless of the propriety of the Ninth Circuit's decision in *Transcon*[9], there is no conflict between the Circuits on the issue before this Court herein.

---

9. The I.C.C. is requesting a stay of mandate pending the Solicitor General's review of the I.C.C.'s decision to appeal this portion of the Ninth Circuit's decision.

CONCLUSION

The judgment of the Fifth Circuit Court of Appeals should be affirmed.

Respectfully submitted,

WILLIAM J. AUGELLO
Counsel of Record
AUGELLO, PEZOLD &
HIRSCHMANN, P.C.
24 Woodbine Avenue - Suite 8
Northport, New York 11768
(516) 261-0100

J. DAVID FORSYTH
SESSIONS & FISHMAN
3600 Place St. Charles
201 St. Charles Avenue
New Orleans, Louisiana 70170
(504) 582-1500

LAWRENCE A. WINKLE
WINKEL & WELLS
Two Lincoln Center
5420 LBJ Freeway
Dallas, Texas 75240
(214) 386-6040

Attorneys for Respondent

APPENDIX A — LIST OF COURT DECISIONS AND ICC DECISIONS GRANTING JUDGMENT TO DEFENDANTS ON THE ISSUE OF THE CARRIER'S FAILURE TO PARTICIPATE IN THE HOUSEHOLD GOODS CARRIER'S BUREAU MILEAGE TARIFF OR THE NATIONAL MOTOR FREIGHT CLASSIFICATION (AS OF 12/4/92)

COURT OF APPEALS

Freightcor Services Inc. v. Vitro Packaging Inc., 969 F.2d. 1563, 1992 WL 195842 (5th Cir. Aug. 14, 1992)

DISTRICT COURTS

Amoco Fabrics and Fibers Company v. A.T.F. Trucking, Inc., 1992 Fed. Carr. Cas. (CCH) ¶ 37,969 (ICC Dec. No. 40526, Feb. 18, 1992), *aff'd sub nom., ATF Trucking Co. Inc. v. Amoco Fabrics & Fibers Co.*, 1992 Fed.Carr.Cas. ¶ 83,787 (N.D. Ala. Sept. 17, 1992)

Atlantis Express, Inc. v. Associated Wholesale Grocers, Inc., 1992 WL 195426 (Civ. No. 4-90-254) (D. Minn. March 6, 1992) *Appeal to 8th Circuit [No. 92-1771 MNMI (April 3, 1992, 8th Cir.)]

Brizendine Trustee on behalf of Brown Transport Truckload, Inc. et al. v. Cotter & Company, No. 91 C 6761 (N.D. Ill. July 22, 1992) *Appeal to 7th Circuit

Brizendine v. United States Gypsum Co., No. 91 C 6754 (N.D. Ill. Sept. 22, 1992)

Brown Transport Truckload Inc. v. Campbell Soup Company, __B.R __, 1992 WL 151206 (Bankr. N.D. Ga. July 1, 1992) *Appeal to District Court, N.D. Ga.

Appendix A

Brown Transport Truckload, Inc. v. Golden Dipt Company, 1992 Fed.Carr.Cas. ¶83,778 (Bankr. N.D. Ga. July 1, 1992)
*Appeal to District Court, N.D. Ga.

Brown Transport Truckload Inc. v. James River Corporation of Virginia, Adv. No. 91-6963A (Bankr. N.D. Ga. June 5, 1992)
*Appeal to District Court, N.D. Ga.

Brown Transport Truckload Inc. v. James River Corporation Dixie Products Div., Adv. No. 91-6955A (Bankr. N.D. Ga. June 5, 1992)
*Appeal to District Court, N.D. Ga.

Brown Transport Truckload, Inc. v. Kumho U.S.A., Inc., 1992 Fed.Carr.Cas. ¶ 83,779 (Bankr. N.D. Ga. July 1, 1992)
*Appeal to District Court, N.D. Ga.

Brown Transport Truckload, Inc. v. Richter Distributinq Company, 1992 Fed.Carr.Cas. ¶ 83,780 (Bankr. N.D. Ga. July 24, 1992)
*Appeal to District Court, N.D. Ga.

Canny Trucking, Inc. v. Anitec Image Corp., 1992 Fed.Carr.Cas. ¶ 83,782 (N.D.N.Y. June 24, 1992)

In re: Columbia Navigation. Inc. v. Teton West Lumber Sales, Civ. No. 89-30176-JLP (D. MT., Great Falls Div., July 28, 1992)

Crest Truck Lines, Inc. v. Cornucopia Natural Foods, Inc., __ F. Supp. __,1992 WL 200021 (D. R.I. Aug. 12, 1992)

F.P. Corp. v Golden West Foods Inc., 1992 Fed.Carr.Cas. ¶ 83,783 (W.D. Va. July 28, 1992)

Appendix A

F.P. Corporation v. Twin Modal, Inc., 1992 Fed.Carr.Cas. ¶ 83,784 (D. Minn. May 4, 1992)
*Appeal to 8th Circuit [No. 92-2258 MNMI (May 21, 1992, 8th Cir.)]

In re: Columbia Navigation, Inc. v. Teton West Lumber Sales, 1992 Fed.Carr.Cas. ¶ 83,785 (D. Mont. July 28, 1992)
*Appeal to 9th Circuit

Security Services. Inc. v. All Freight Services. Inc., 1992 Fed.Carr.Cas. ¶ 83,788 (S.D. Cal. May 4, 1992)
*Appeal to 9th Circuit

Security Services Inc. f/k/a Riss International Corp. v. Centerline Industries and Traffic Paint Mfg., No. 91-2224C(8) (E.D. Mo. Oct. 8, 1992)

Security Services, Inc. v. Cramer Products Inc., 1992 Fed.Carr. Cas. ¶ 83,789 (W.D. Mo. July 14, 1992)

Security Services. Inc. v. Friedrich Air Conditioning and Refrigeration, Civil Action H-91-3227 (S.D. Tex. May 15, 1992)

Security Services Inc. f/k/a Riss Int'l Corp. v. Garvey Corp., Civil Action No 91-4789(JBS) (D. N.J. Oct. 23, 1992)

Security Services, Inc. v. India Teximpor, Inc., No. 92-1042 (D. N.J. Sep. 30, 1992)
*Appeal to 3rd Circuit

Security Services, Inc. v. James River Corp. of Virginia, 1992 Fed.Carr.Cas. ¶ 83,791 (E.D. Va. Sept. 8, 1992)

Appendix A

Security Services, Inc. v. John H. Harland Company, Civil File No. 91A 50388-5 (Decalb Co., Ga. Oct 12, 1992)

Security Services, Inc. f/k/a Riss International v. K MART Corp., Case No. 91-CV-6782 (E.D. Pa. Sept. 8, 1992)
*Appeal to 3rd Circuit

Security Services, Inc. f/k/a Riss International v. P-Y Transportation, Inc. f/k/a C.T.S Brokerage, Inc., Case No. 1:91CV2192 (N.D. Ohio Aug. 26, 1992)
*Appeal to Sixth Circuit, C.A. #92-3992

Security Services, Inc. v. Riverwood International Corp., 1992 Fed.Carr.Cas. ¶ 83.792 (W.D. La. July 1, 1992)
*Appeal to 5th Circuit

Security Services, Inc. v. RPL Associates, Civil Action No. 91-CV-75705-DT (E.D. Mich. July 27, 1992)
*Appeal to 6th Circuit

Security Services, Inc. v. Snomax, Inc. d/b/a Airmax, Inc., 1992 Fed.Carr.Cas. ¶ 83,793 (S.D. Tex. Aug. 31, 1992)

Wonderoast - Petition for Declaratory Order, 8 I.C.C.2d 272 (ICC Dec. No. 40387, Feb. 14, 1992), *aff'd sub nom., Transportation Systems International, Inc. v. Wonderoast, et al.*, 1992 Fed.Carr.Cas. ¶ 83,786 (Bankr. D. Minn. June 26, 1992)

STATE COURTS

Security Services, Inc. v. Georgia-Pacific Corp., 1992 Fed.Carr.Cas. ¶ 83,790 (Fulton Co., Ga. August 24, 1992)
*Appeal to Georgia State Court of Appeals

Appendix A

Security Services, Inc. v. Sweetheart Cup Company, Inc., Civ. Action No. 92VS46930-F (Fulton Co., Ga. August 7, 1992)

Security Services, Inc. v. John H. Harland Company, Civil File No. 91A 50388-5 (DeKalb Co., Ga. Oct. 12, 1992)
*Appeal to Georgia State Court of Appeals

I.C.C. DECISIONS

7/24 Freight Sales, Inc. v. Atlantis Express, Inc., 1992 Fed. Carr. Cas. (CCH) ¶ 37,982 (ICC Dec. No. 40477, April 27, 1992)

Friedman Bag Company, Inc. v. A.T.F. Trucking, Inc., 1992 Fed. Carr. Cas. (CCH) ¶ 37,986 (ICC Dec. No. 40599, May 22, 1992)

Jasper Wyman & Son, et. al.— Petition for Declaratory Order— Certain Rates and Practices of Overland Express, Inc., 8 I.C.C.2d 246 (ICC Dec. No. 40510, Jan. 30, 1992)
*Appeal to District of Columbia Circuit

Menasha Corp., et al v. United Shipping Co., Inc., 1992 Fed. Carr. Cas. (CCH) ¶ 37,977 (ICC Dec. No. 40602, April 29, 1992)

The B F Goodrich Company—Petition for Declaratory Order— Certain Rates and Practices of Freightcor Services, Inc., No. 40516, Dec. 1, 1992. (Embraces seven cases referred by various courts to the ICC)

E.A. Miller, Inc. — Petition for Declaratory Order—Certain Rates and Practices of F.P. Corp., No. 40799, Nov. 17, 1992

Roberts & Dybdahl, Inc.—Petition for Declaratory Order— Certain Rates and Practices of Rose-Way, Inc., No. 40755, Nov. 20, 1992